

The complaint

Mr M complains about the quality of a car he has been financing through an agreement with BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services, who I'll call "Alphera".

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I know it will disappoint Alphera, but I don't think this car has been of satisfactory quality and I'm asking them to put things right for Mr M. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr M acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Alphera, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr M. The car here was about seven years old and had travelled about 28,000 miles when it was supplied to Mr M. So, I think a reasonable person would expect it to be showing some signs of wear and tear and to consider that the car wouldn't be fault free as perhaps they'd expect with a new car.

The relevant legislation says that we should consider whether the car has been durable when we think about whether it has been of satisfactory quality.

The gearbox on Mr M's car failed after the car had completed a little over 31,000 miles. I don't think a reasonable person would consider a gearbox to have been durable if it failed so

soon. I say that because online research, and advice from our own internal experts, suggests a gearbox should last the life of a car if maintained properly. I've not seen evidence to suggest this car was poorly maintained by Mr M.

I've considered the cause of the gearbox failure. A third party garage has explained that a roller bearing has collapsed, and swarf has therefore contaminated the gearbox. Online research, and our own internal expert, has confirmed that roller bearings are sealed units and can be expected to last about 100,000 miles. So, I'm persuaded the bearing and therefore, the gearbox and the car, hasn't been durable.

Alphera have suggested our approach is inconsistent. They've referred us to a different case where it was my view that a gearbox failure, at a similar mileage, couldn't reasonably be considered to be the business' responsibility. That case had different characteristics as the failure mode was electrical, and not mechanical. Those faults tend to happen at any stage of a component's life and didn't indicate to me that the problem was one of durability. It's for this Service to consider cases on their individual merits and, having done so, I think this gearbox, with its specific failure mode, hasn't been durable.

Putting things right

The relevant legislation gives Alphera an opportunity to repair a fault in circumstances such as this. As Mr M has already had the car repaired, Alphera should refund the money he paid for that repair, and they should add interest to the refund as Mr M has been deprived of that money.

My final decision

For the reasons I've given above, I uphold this complaint and tell BMW Financial Services (GB) Limited to refund the £4,400 Mr M spent on repairs to the gearbox and add 8% simple interest per year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 June 2023.

Phillip McMahon
Ombudsman